

Assembly Bill No. 1769

CHAPTER 699

An act to add Section 17538.41 to the Business and Professions Code, relating to advertising.

[Approved by Governor September 19, 2002. Filed
with Secretary of State September 19, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1769, Leslie. Advertising: unsolicited cellular telephone and pager text messages.

Existing law provides for the regulation of advertising and specifically prohibits a person conducting business in this state from faxing or electronically mailing unsolicited advertising material, unless certain conditions are satisfied. Existing law provides that a violation of the provisions regulating advertising is a misdemeanor, and also provides for imposition of civil penalties and injunctive relief.

This bill would, subject to certain exceptions, generally prohibit a person or entity conducting business in this state from transmitting or causing to be transmitted a text message advertisement to a cellular telephone or pager equipped with short message or a similar capability. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 17538.41 is added to the Business and Professions Code, to read:

17538.41. (a) (1) Except as provided in subdivision (b), (c), or (d), no person or entity conducting business in this state shall transmit or cause to be transmitted a text message advertisement to a cellular telephone or pager equipped with short message capability or any similar capability allowing the transmission of text messages. A text message advertisement is a message, the principal purpose of which is to promote the sale of goods or services to the recipient, consisting of advertising

material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit.

(2) This section shall apply when a text message advertisement is transmitted to a telephone number assigned for cellular telephone or pager service to a California resident.

(b) This section shall not apply to text messages transmitted at the direction of a person or entity offering cellular telephone or pager service if the subscriber is offered an option to not receive those text messages.

(c) This section shall not apply to text messages transmitted by a business that has an existing relationship with the subscriber if the subscriber is offered an option not to receive text messages from that business.

(d) This section shall not apply to text messages transmitted by an affiliate of a business that has an existing relationship with the subscriber, but only if the subscriber has provided consent to the business with which he or she has that relationship to receive text messages from affiliates of that business. “Affiliate” means any company that controls, is controlled by, or is under common control with, another company.

(e) Subdivision (a) shall not impose an obligation on a person or entity offering cellular or pager service to control the transmission of a text message unless the message is transmitted at the direction of that person or entity.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

